Supreme Court, U.S.
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No 94-

In the Supreme Court

OF THE

UNITED STATES

OCTOBER TERM 1994

ESTATE OF SILVIO RAVETTI
Petitioner,

Vs.

UNITED STATES OF AMERICA
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

I. DOES THE OTHER SPOUSE HAVE STANDING TO JUDICALLY QUESTION THE GRANTING OF INNOCENT SPOUSE STATUS UNDER §6013(e) BY THE INTERNAL REVENUE SERVICE?

II DO THE STATE COURTS HAVE JURISDICTION TO ADJUDICATE INNOCENT SPOUSE STATUS UNDER §6013(e)?

III DOES THE INTERNAL REVENUE SERVICE HAVE JURISDICTION TO CONSIDER INFIDELITY AND BEHAVIOR DURING THE MARRIAGE IN ADJUDICATING INNOCENT SPOUSE STATUS UNDER §6013(e)?

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OPINIONS BELOW

The Opinion of the Court of Appeals is attached in Appendix A. The opinion of the United States District Court for the Northern District of California is reported at Estate of Ravetti 92-1 USTC ¶50,210. It is attached in appendix B.

The opinion of the Tax Court is reported at Estate of Ravetti 56 TCM 1176. It is attached as Appendix C.

JURISDICTION

The Judgment of the Ninth Circuit was entered on October 11, 1994. Justice O'Connor, as Circuit Justice extended the time for filing this petition for certiorari to February 8, 1995. This Court's jurisdiction is invoked under 28 U. S. C. 1254 (1).

Jurisdiction was invoked below under the Constitution, 28 USC 1346, 5 USC 702, and 28 USC 1291.

STATUTORY PROVISIONS INVOLVED

Section 6013(e) - INNOCENT SPOUSE STATUTE

(e) Spouse Relieved of Liability in Certain Cases.---

(1) In general.---Under regulations prescribed by the Secretary if---

(A) a joint return has been made under this section for a taxable year,

(B) on such return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse,

(C) the other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was such substantial understatement, and

(D) taking into account all the facts and circumstances, it is inequitable to hold the other spouse

liable for the deficiency in tax for such taxable year attributable to such substantial understatement.

(2) **Grossly erroneous items.**---For purposes of this subsection, the term "grossly erroneous items" means, with respect to any spouse---

(A) any item of gross income attributable to such spouse which is omitted from gross income, and

(B) any claim of deduction, credit, or basis by such spouse in an amount for which there is no basis in fact or law.

(3) **Substantial understatement.**---For purposes of this subsection, the term "substantial understatement" means any understatement (as defined in section 6662(d)(2)(A) which exceeds $500.

(4) **Understatement must exceed specified percentage of spouse's income.**---

(A) Adjusted gross income of $20,000 or less.--- If the spouse's adjusted gross income for the preadjustment year is $20,000 or less, this subsection shall apply only if the liability described in paragraph (1) is greater than 10 percent of such adjusted gross income.

(B) Adjusted gross income of more than $20,000.--- If the spouse's adjusted gross income for the preadjustment year is more than $20,000, subparagraph (A) shall be applied by substituting "25 percent" for "10 percent".

(C) Preadjustment year.---For purposes of this paragraph, the term "preadjustment year" means the most recent taxable year of the spouse ending before the date the deficiency notice is mailed.

(D) Computation of spouse's adjusted gross income.---If the spouse is married to another spouse at the close of the preadjustment year, the spouse's adjusted gross income shall include the income of the new spouse (whether or not they file a joint return).

(E) Exception for omissions from gross income.---This paragraph shall not apply to any liabilIty attributable to the omission of an item from gross income.

(5) Special rule for community property income.---For purposes of this subsection, the determination of the spouse to whom items of gross income (other than gross income from property) are attributable shall be made without regard to community property laws.

TRANSITIONAL RULE
Section 6013(e), INNOCENT SPOUSE STATUTE

26 Section 6013

1984 Act. Section 424(c) of Pub. L. 98-369, Div. A as amended by Pub. L. 100-647, Section 6004, Nov. 10, 1988, 102 Stat. 3685, provided that :

(1) In general.---Except as provided in paragraph (2), the amendments made by subsections (a) and (b) [amending subsec. (e) of this section and enacting section 66(b), (c), redesignating as section 66(d) former (66(b), and amending headings of section 66 and 66(a) of this title] shall apply to all taxable years to which the Internal Revenue Code of 1954 applies. Corresponding provisions shall be deemed to be included in the Internal Revenue Code of 1939 and shall

apply to all taxable years to which such Code applies.

"(2) **Authority to disregard community property laws.---** Subsection (b) of section 66 of the Internal Revenue Code of 1954, as added by subsection (b) [section 66(b) of this title], shall apply to the taxable years beginning after December 31, 1984."

"(3) **Transitional rule.---**If---

"(A) a joint return under section 6013 of the Internal Revenue Code of 1954 [this section] was filed before January 1, 1985,

"(B) on such return there is an understatement (as defined in section 6661(b)(2)(A) of such Code [section 6661(b)(2)(A) of this title] which is attributable to disallowed deductions attributable to activities of one spouse,

"(C) the amount of such disallowed deductions exceeds the taxable income shown on such return,

"(D) without regard to any determination before October 21, 1988, the other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was such an understatement, and

"(E) the marriage between such spouses terminated and immediately after such termination the net worth of the other spouse was less than $10,000,

notwithstanding any law or rule of law (including res judicata), the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such understatement, and, to the

extent the liability so attributable has been collected from such other spouse, it shall be refunded or credited to such other spouse. No credit or refund shall be made under the preceding sentence unless claim therefore has been submitted to the Secretary of the Treasury or his delegate before the date 1 year after the date of the enactment of this paragraph [No. 10, 1988], and no interest on such credit or refund shall be allowed for any period before such date of enactment."

STATEMENT OF THE CASE

This is an action for the refund of Federal Income Tax before the U. S. District Court for the Northern District of California. It was decided on summary judgment. The same tax years were before the Tax Court. These companion cases are either the subject of a petition in this Court or in the Ninth Circuit.

The Decedent and his former wife filed joint tax returns in all years pertinent here, the years 1976 thru 1981. The Ravettis were divorced in 1982. Mrs Ravetti received over a half million dollars in the property settlement. The Estate inventory indicated that the value of the estate was approximately the same. Joint notices of deficiency were issued by I. R. S. for all years. Each spouse filed separate petitions to the United States Tax Court. Without any notice to or opportunity to be heard by Petitioner, even though notice was requested, the I.

R. S. stipulated in Mrs. Ravetti's tax cases that she was an innocent spouse under the provisions of §6013 (e) of the Internal Revenue Code.

After learning that the Tax Court had granted innocent spouse status to Mrs Ravetti, Petitioner attempted to raise the question before the Tax Court. The Tax Court denied any relief citing its lack of equity powers under Commissioner v Gooch 64 S.Ct 184. The Court suggested if there was any relief it would be in the United States District Court or the state courts. The opinion of the Tax Court is reported at Est of Ravetti 56 TCM 1176. This decision was appealed to the Court of Appeals, and will be before this Court by separate petition.

The Petitioner then paid one tax year in full and brought the present action in United States District Court. On motion for summary judgment by the United States the District Court denied relief and dismissed the case holding it was without jurisdiction and suggesting that jurisdiction was either in the United States Tax Court or the state courts. This opinion is reported at Estate of Ravetti 92-1 USTC ¶50,210.

Both the Tax Court and the District Court appear to have assumed that some court must have jurisdiction to review to pass constitutional challenge. However, on appeal Justice first raised the question whether there was any standing to question an Internal Revenue Service finding of innocent spouse status under §6013(e) at all. The Ninth Circuit

agreed with the Justice Department and stated:

> " On appeal, the government argues that Silvio's estate lacked standing to challenge the innocent spouse exemption for Martha. This ground was not argued below. We can nevertheless consider it, because lack of standing , as an aspect of lack of subject matter jurisdiction may be raised for the first time on appeal. See Associated General Contractors of California, Inc. v. Coalition for Economic Equity, 950 F.2d 1401, 1405 (9th Cir. 1991). We affirm the dismissal for lack of jurisdiction."

The reason for this conclusion was that husband and wife are jointly and severally liable for deficiencies in a joint return.

> " Silvio's estate lacked standing to challenge the innocent spouse relief granted to his ex-wife, because he would owe the same amount of money regardless. He was liable jointly and severally on their joint returns"

It was suggested that Ravetti's remedy would be to request contribution from the state courts despite the decision of the United States Tax Court conferring innocent spouse status under §6013 (e).

The Ninth Circuit appears to approve consideration by the Service of the fact of remarriage and what it calls "previous affairs". It also seems to approve of a general evaluation, apparently limited to the government agency, of the marriage.

> " Martha's theory for why she did not benefit from her husband's having money which rightly should have been paid in taxes does indeed involve a determination about how Silvio behaved during the marriage. It may be that the Estate could prove, were it allowed, that the IRS erred in granting Martha an innocent spouse determination. We do not reach that question, and need not, because such error would not affect Silvio's estate's liability. Silvio's estate would owe all the money regardless. The only harm would be to the IRS, in depriving it of an additional source from which to recover."

An examination of the objective uncontradicted facts in this case establishes that Martha Ravetti was not entitled to innocent spouse status under the Internal Revenue Code.

The returns were all before 1985. Before the 1984 amendment to §6013 (e) innocent spouse treatment was limited to omissions of income. The deficiencies in tax, here, were all in connection with deductions. Since Martha received over a half million dollars from the divorce she was not entitled to relief under the transitional rule, 102 Stat. 3685. She

greatly exceeded the net worth requirements of E. Even under present law since she " directly or indirectly" benefited from the items involved she did not qualify for the same reason. See Reg. 1.6013-5(b).

The petition here will raise the issue of whether petitioner has been deprived of procedural due process by taking away his right of contribution from Mrs. Ravetti by conferring innocent spouse status, without a meaningful opportunity for Petitioner to receive a hearing on the question. It will raise the question of whether the state courts have any jurisdiction to decide federal tax questions when there has been a ruling on the question in issue by the Tax Court of the United States. (The issue of whether the other spouse is an indispensable party to litigation with respect to innocent spouse status under the rules of Shields v Barrow 58 U. S. 130 will be discussed in the companion case arising from the Tax Court.)

REASONS FOR GRANTING THE WRIT

We need not cite social historians to prove to this Court that divorce in the United States is becoming more the rule than an exception. The normal form of tax return for taxpayers who are married is a joint return. Given the enormous number of returns involved, the question of who is an innocent spouse under §6013 (e), and the question of what Court has jurisdiction to decide that question becomes of paramount importance.

The problems raised by the Ninth Circuit's decision of course are not limited to the divorce situation, even spouses who are still married may seek the relief provided by the section.

The decision of the Court of Appeals is the only case on this subject we have found except for the lower courts' published decisions on Ravetti.

We must respectfully suggest that the Court of Appeals has missed the point. Congress has granted a right to some spouses to avoid tax liability. If this right is granted the other spouse must pay a disproportionate share of the liability. The judicial review requested is not that of the principle of joint and several liability, but of status under §6013 (e).

REASONS FOR GRANTING THE WRIT

1. THIS DECISION UNCONSTITUTIONALLY DENIES JUDICIAL REVIEW AND GRANTS UNLIMITED JURISDICTION TO THE INTERNAL REVENUE SERVICE

In Fuentes v Shevin 407 U.S. 67; 92 S.Ct. 1983; 32 L.Ed2d 556 (1971) at 79 this Court said:

> "For more than a century the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." Baldwin v

> Hale, 1 Wall. 223,233 17 L. ED. 531. See Windsor v McVeigh, 93 U. S. 274, 23 L.Ed. 841; Hovey v Elliott 167 U. S. 409, 17 S. Ct. 841, 42 L. Ed. 215; Grannis v Ordean, 234 U. S. 385, 34 S.Ct. 779, 58 L. Ed. 1363. It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." Armstrong v Manzo 380 U. S. 545, 552, 85 S. Ct 1187, 1191, 14 L. Ed. 2d 62."

Here, separate petitions were filed in the Tax Court, and no notice was required or given. The Courts below all denied hearings on the merits.

The principles stated above, however, apply even in tax cases. Laing v United States 423 U.S 161; 96 S Ct 473; 46 L Ed 2d 416; South Carolina v Regan, 465 U. S. 367, 104 S. CT. 1107, 79 L. Ed. 373 (1984)

Laing is important since it discusses judicial review and establishes a rule of statutory interpretation that we believe controlling here. There the question was whether the taxpayer was entitled to judicial review of a jeopardy assessment. The Court said in deciding in the affirmative:

> "Denial of an opportunity to litigate in the Tax Court is out of keeping with the thrust of the Code, which generally allows income-tax payers access to that court. Where exceptions are intended the Code is

> explicit on the matter. See e. g. §6871(b). Denying a Tax Court forum to a particular class of taxpayers is sufficiently anomalous that an intention to do so should not be imputed to Congress when the statute does not expressly so provide."

Here a finding as a matter of federal law that Mrs Ravetti is to be relieved of liability, and Mr. Ravetti is to be solely liable without the possibility of federal judicial review is equally anomalous without a specific statutory enactment by Congress.

Both the Tax Court and the District Court gave at least lip service to these fundamental principles, however, the Court of Appeals took the whole leap and denied federal judicial review entirely in "innocent spouse", §6013 (e) adjudications by the Internal Revenue Service. There is no other interpretation of a denial of standing to sue.

The Ravetti cases are the only ones published that discuss the question of judicial review. Finding fault with a spouse is more than prevalent, and litigation to establish that fault is more than common. The problem is a significant and recurring one.

The Court should not allow this federal tax question to be finally decided by an administrative agency, or a state court. Particularly, the Ninth Circuit solution should not be allowed in the complete absence of any Congressional history indicating that Congress intended

to deny judicial review of administrative action under the section.

2. ALLOWING JUDICIAL REVIEW OF §6013 (e) ONLY IN STATE COURT IS CONSTITUTIONALLY IMPERMISSIBLE AND WAS NOT INTENDED BY CONGRESS

The extent of state court review of Tax Court findings of innocent spouse status allowed by the Ninth circuit is far from clear. The lower courts seem to have review of the facts of eligibility in mind. However, the Court of Appeals speaks of "equitable matter".

We felt below that the statement that under the supremacy clause that a state court had no jurisdiction over deciding innocent spouse status after a decision of the Tax Court was a truism. Furthermore, we think it clear that at least the California Courts feel the same. In So. Calif. Gas Co. v. PUC 23 Cal 3d 470 the California Supreme Court was reviewing a rate setting order which necessarily involved a federal tax deduction which had been the subject of an I.R.S administrative letter ruling. It held that the state courts did have jurisdiction, but only because letter rulings are not final. Implicit in the decision was the assumption that a final decision of the Tax Court would be binding on the California courts.

An examination of the legislative history of §6013 (e) fails to indicate any intent by Congress to confer jurisdiction on the state courts. The

Ninth Circuit decision so holding should be disapproved.

South Carolina v Regan supra clearly mandates judicial review in tax cases somewhere. If there really is an equity jurisdiction problem the District Court, as it has in so many other tax jurisdiction situations, could fill the gap. This is a much more sensible solution than proposing a nebulous state court jurisdiction. Furthermore, it would avoid the problem of partial relief in state court review which was discussed in Armstrong v Manzo Supra.

3. The Court Should Review the Ninth Circuit's Implication that the Internal Revenue Service Can Consider Domestic Relation Behavior Under §6013 (e)

The Tax Court was created because Congress recognized that the Internal Revenue Service sometimes could and would make mistakes. If Ravetti had been allowed to question the grant to Mrs Ravetti the revenue would not have suffered. In fact the additional resources for satisfying the deficiencies might be of the greatest importance for the revenue.

Here, the I. R. S. got only one side of the story. Obviously when the courts and the Service refused to listen to the other spouse they were refusing assistance from the party best able to know facts which would protect the revenue from improper granting of §6013 (e) status. Even if, as the Ninth Circuit

held, the Service is the court of final decision on innocent spouse status, it should hear from the opposing spouse. In the present case when counsel for the husband asked Internal Revenue Counsel whether there was an attempt to grant such status in Mrs. Ravetti's case he was ignored. Then without notice or opportunity to be heard the Service stipulated in Tax Court to a status which for all practical purposes took away any right to contribution from Mrs. Ravetti for the payment of the income tax deficiencies.

Furthermore, the implications that infidelity and behavior during the marriage may be considered by the Service raises disturbing questions which should be laid to rest by this Court. The control the Service has over business decisions should not be duplicated in the domestic relation area. We wonder where the Service will find the social workers, psychologists and other specialist who will be called upon to administer this new and important duty if the Ninth Circuit's grant of jurisdiction is allowed to stand.

The implications of a denial of court review in adjudications of status under §6013(e) by the Service should disturb this Court.

CONCLUSION

We recognize that there is a serious question whether there is jurisdiction to address this issue in the Tax Court. It may be that only the District Court has

the full right of review mandated by the Constitutional principles announced by this Court. However, Petitioner should have a right to have this federal tax issue decided under federal law and by a federal court. Since both the Tax Court and the District Court cases are before the Court these cases may be good ones to review.

Dated: January 25, 1995

Respectfully Submitted,

Richard H. Foster
Attorney for Petitioner

APPENDIX

A. Opinion of Ninth Circuit a1

B. Opinion of Tax Court a11

C. Opinion of District Court a17

APPENDIX A
COURT OF APPEALS

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FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
No. 92-15883

ESTATE OF SILVIO RAVETTI,
Plaintiff-Appellant,

V.

UNITED STATES OF AMERICA,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of California
D. Lowell Jensen, District Judge, Presiding

Submitted October 3, 1994*
San Francisco, California

Filed October 11, 1994

Before: Alfred T. Goodwin, Diarmuid F. O'Scannlain, Circuit Judges.

Opinion by Judge Kleinfeld

SUMMARY

Tax/Litigation and Procedure (Civil)/Standing

The court of appeals affirmed district court judgment. The court held

that a souse's estate lacked standing to challenge an Internal Revenue Service 22(IRS) determination that the other spouse was "innocent" of liability on their joint tax returns.

Silvio and Martha Ravetti were divorced. They agreed to share tax liability arising out of past returns, and provided for how to apportion liability if Martha were determined to be an "innocent spouse". Silvio died.

The IRS and Martha stipulated, and the Tax Court decided pursuant to the stipulation, that Martha had no liability for additional taxes for certain past years, because she was an "innocent spouse" pursuant to 26 U.S.C. Section 6013(e)(1), with regard to the deficiencies. The Ravettis had filed jointly, and underpaid their taxes because of subsequently disallowed deductions. The IRS allowed Martha the innocent spouse relief on the ground that she relied on her husband and their accountant to assure that the returns were properly prepared, and she did not benefit from the understatement of tax.

Appellant the Estate of Silvio Ravetti sued in the district court for a tax refund and declaratory and equitable relief. The estate claimed that the Tax Court decision in favor of Martha deprived Silvio's estate of procedural due process of law, because it received no notice or opportunity to be heard. The estate claimed that Martha received substantial benefit from the disallowed deductions. The district court dismissed

the estate's case for lack of jurisdiction, on the ground that the government had not waived its sovereign immunity. The estate appealed.

[1] Silvio's estate lacked standing to challenge the innocent spouse relief granted his ex-wife, because he would owe the same amount of money regardless. He was liable jointly and severally on their joint returns. The IRS could take all the money owed from Silvio, whether Martha was an "innocent spouse" or not.

[2] It may be that the estate could prove,were it allowed, that the IRS erred in granting Martha an innocent spouse determination. However, such an error would not affect Silvio's estate's tax liability. Silvio's estate would owe all the money regardless.

[3] A taxpayer lacks standing to challenge the "innocent spouse" relief granted to his or her spouse.

[4] Silvio's estate may be entitled to contribution from Martha under state law.

[5] Because Silvio's estate had no standing, the dismissal for lack of jurisdiction was affirmed.

COUNSEL

Richard H. Foster, Salinas, California, for the plaintiff-appellant.

Mary Frances Clark, Tax Division, United

States Department of Justice, Washington, D.C., for the defendant-appellee.

OPINION

KLEINFELD, Circuit Judge:

The Estate of one spouse sued in district court to challenge the IRS determination that the other spouse was "innocent" of liability on the joint returns.

FACTS

Silvio and Martha Ravetti were divorced in 1982. They agreed to share tax arising out of past returns, and specifically provided for how to apportion liability if Martha were determined to be an "innocent spouse." Silvio died in 1986. Meanwhile, Martha and the IRS stipulated, and the Tax Court decided pursuant to their stipulation,that she had no liability for additional taxes for 1976, 1977, and 1978, because she was an "innocent spouse" pursuant to 26 U.S.C. Section 6013(e)(1), with regard to the deficiencies. The Ravettis had filed jointly, and underpaid their taxes because of subsequent disallowed deductions arising out of tax shelters. The IRS allowed Martha the innocent spouse relief on the ground that she

relied on her husband and their accountant to assure that the returns were properly prepared, and "she did not benefit from the understatement of tax because the unpaid money was spent on his new wife or previous affairs."

Silvio's estate sued in district court for a tax refund of amounts paid under protest, and declaratory and equitable relief. The estate claimed that the tax court decision in favor of Martha deprived Silvio's estate of procedural due process of law, because it received no notice or opportunity to be heard. By sworn declaration of counsel, the estate claimed that Martha did in fact receive substantial benefit from the disallowed deductions during the marriage and in the division of property in the divorce.

ANALYSIS

The district court dismissed the Estate's case for lack of jurisdiction, on the ground that the government had not waived its sovereign immunity. On appeal, the government argues that Silvio's estate lacked standing to challenge the innocent spouse exemption for Martha. This ground was not argued below. We can nevertheless consider it, because lack of standing , as an aspect of lack of subject matter jurisdiction may be raised for the first time on appeal. See Associated General Contractors of California, Inc. v. Coalition for Economic Equity, 950 F.2d 1401, 1405 (9th Cir. 1991). We affirm the dismissal for lack of jurisdiction.

We analyze the question in terms of standing, because in this case that analysis is simpler, and we therefore do not reach the issues of sovereign immunity, the Anti-Injunction Act, and the tax exception to the Declaratory Judgment Act, which were dispositive below.

[1] Silvio's estate lacked standing to challenge the innocent spouse relief granted to his ex-wife, because he would owe the same amount of money regardless. He was liable jointly and severally on their joint returns. "[I]f a joint return is made, the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several." 26 U.S.C. Section 6013(d)(3). That means the IRS could take all the money owed from Silvio, whether Martha was an "innocent spouse" or not. Even if Martha owed the money jointly and severally, Silvio's estate would not be entitled to a refund. See Conklin v. Commissioner, 897 F.2d 1027, 1029 (10th Cir. 1990).

Martha escaped liability under the innocent spouse provision:

> Under regulations prescribed by the Secretary if-
>
> (A) a joint return has been made under this section for a taxable year,
>
> (B) on such return there is a substantial understatement of tax attributable to grossly erroneous

items of one spouse,

(C) the other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was such substantial understatement, and

(D) taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such substantial understatement,

then the other spouse shall be relieved of liability for tax (including interest,penalties, and other amounts) for such taxable year to the extent such liability is attributable to such substantial understatement.

26 U.S.C. Section 6013(e)(1).

[2] The estate argues that the IRS should not have attempted to "determine the degree of fault in the marital relationship" without allowing him to be heard. Martha's theory for why she did not benefit from her husband's having money which rightly should have been paid in taxes does indeed involve a determination about how Silvio behaved during the marriage. It may be that the Estate could prove, were it allowed, that the IRS erred in granting Martha an innocent spouse determination. We do not reach that question, and need not, because such error would not affect

Silvio's estate's liability.Silvio's estate would owe all the money regardless. The only harm would be to the IRS, in depriving it of an additional source from which to recover.

[3] A taxpayer generally has no standing to challenge the tax liability determination of another taxpayer. Al-Kim, Inc. v. United States, 650 F.2d 944, 947 (9th Cir. 1979); Graham v. United States, 243 E,2d 919, 922 (9th Cir. 1957). Silvio's estate could not obtain contribution from Martha in the tax case, because the tax code has no provision enabling a spouse to obtain contribution from an "innocent spouse," and no authority has been suggested to us for this unlikely proposition. Nor is there any provision for reducing a taxpayer's liability because of the joint and several obligation of his or her spouse. A taxpayer therefore lacks standing to challenge the "innocent spouse" relief granted to his or her spouse.

[4] Silvio's estate may be entitled to contribution from Martha, under state law. Two possible theories are mentioned in the briefs. One is the divorce decree. It specifically provides for a judicial proceeding relating to an innocent spouse determination by the IRS.[1] A second is California's general

---

Paragraph 3 of their stipulation provides:

Any and all liability for tax assessments arising in connection with

contribution statute. Cal. Civ. Code Section 1432. There may be others. We intimate no resolution of possible law issues.

Silvio's estate argues that it has standing to challenge the IRS determination, because that determination

---

past joint state and federal income tax returns filed by the parties shall be shared equally between Petitioner [Silvio] and Respondent [Martha]. Any and all post-separation payments made on account of such assessments by Petitioner shall be credited solely to Petitioner's share of said liability. Respondent shall hold Petitioner harmless from and indemnify him for the other one-half share of said liability, including all penalties and interest incurred thereon, except that, if Respondent should be judicially determined to be an "innocent spouse" in relationship to any such tax assessment, then Petitioner shall assume the liability for paying all penalties and interest on that particular tax assessment occurring through the date of judicial determination, and Respondent shall assume the liability for paying one-half of the principal assessment or any penalty or interest attributable thereto which has accrued after the date of judicial determination. If either party should successfully bring a judicial proceeding to enforce the terms of this Paragraph 3 against the other party, then that party shall be awarded his or her attorney's fees and costs incurred in said proceeding.

will control the result in state court under the Supremacy Clause and by res judicata. No authority is cited for that proposition. We do not agree with it. The question whether, under federal law, Martha escapes additional taxes which Silvio's estate must pay to the IRS, does not control the state law determination of whether, as an equitable matter, Martha should have to contribute anything to Silvio. The Supremacy Clause has no application, because the state court will not purport to determine how much Martha or Silvio's estate must pay the IRS. Res judicata will not apply because Silvio's estate was not a party nor in privy with Martha or the IRS in her innocent spouse adjudication. Mertens v. Black, 948 F.2d 1105 (9th Cir. 1991)(per curiam).

[5] Because Silvio's estate had no standing, the dismissal for lack of jurisdiction is affirmed. Warth v. Seldin, 422 U.S. 490, 498 (1975).

AFFIRMED

APPENDIX B
TAX COURT

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T.C. MEMORANDUM OPINION
1989 - 45

UNITED STATES TAX COURT

ESTATE OF SILVIO RAVETTI, DECEASED,

Petitioner

v

COMMISSONER OF INTERNAL REVENUE

Respondent

Docket No. 2913-87.
Filed January 30, 1989

Richard H. Foster, for the petitioner

Donna Rice Owens, for the respondent

MEMORANDUM OPINION

NAMEROFF, Special Trial Judge: This case was assigned pursuant to section 7443A(b)(4) and Rules 180, 181, and 182.[1]

On September 16, 1988, petitioner filed a motion to amend and supplement its timely filed petition of February 2, 1987. The motion was accompanied by a proposed Amended and Supplementary Petition, a Declaration by petitioner's attorney, and a Memorandum of Law in Support of the Motion to Amend the Petition. The motion states that respondent objects to the filing of the amended petition. The proposed amended petition asks this Court to find that respondent violated petitioner's due process rights by granting "innocent spouse treatment" to Silvio Ravetti's ex-wife, Martha Ravetti, without providing petitioner notice or the opportunity to be heard.

On November 6, 1986, respondent issued a joint notice of deficiency to petitioner and Martha Ravetti, determining deficiencies for 1979 and 1980 in the amounts of $114,255.64 and $178,738.60, respectively. In addition, the Commissioner determined additions to tax under section 6653(a) in the amount

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[1] Section references are to the Internal Revenue Code of 1954, as amended, and in effect during the tax years at issue unless otherwise indicated. Rule references are to the Tax Court Rules of Practice and Procedure.

of $5,713.00 and $8,937.00, respectively.

Martha Ravetti filed a separate petition with this Court at docket no. 2750-87 with regard to these years. On May 6, 1988, this Court entered its decision in that case, pursuant to the agreement of the parties thereto, to the effect that there are no deficiencies or additions to tax due from Martha Ravetti for 1979 and 1980 by virtue of section 6013(e). The proposed amended petition contends that the respondent's actions in docket no. 2750-87 deprived petitioner of its right to contribution for the joint and several tax liability incurred from the jointly filed returns. The proposed amended petition further contends that respondent's failure to notify petitioner of the decision to grant Martha innocent spouse treatment constituted a violation of procedural due process.

Rule 41(a) provides: "A party may amend his pleading once as a matter of course at any time before a responsive pleading is served.***Otherwise a party may amend his pleading only by leave of Court or by written consent of the adverse party***" The answer was served in this manner in April 1987. Consequently, leave of Court is required to amend the petition since respondent objects to the proposed amendment. Rule 41(a) further provides that leave to amend "shall be freely given when justice so requires."

In Foman v. Davis, 371 U.S. 178, 182 (1962), the Supreme Court stated that leave to amend may be inappropriate where there is "any apparent or declared reason - such as undue delay, bad faith or dilatory motive on the part of the

movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, futility of amendment, etc." - for denying it. If permitting an amended pleading would be futile, it is within the discretion of the Court to refuse to grant leave to file the amendment. See Jafree v. Barber, 689 F.2d 640, 644 (7th Cir. 1982); Klamath-Lake Pharmaceutical Association v. Klamath Medical Service Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983). Under the facts of this case, we believe it would be beyond our jurisdiction, as well as futile and inappropriate for this Court to rule on the constitutionality of respondent's action with regard to Martha Ravetti or any claim by petitioner for contributions.

When a husband and wife elect to file a joint income tax return, they become jointly and severally liable for the entire tax payable upon the aggregate income. Furnish v. Commissioner, 262 F.2d 727, 731 (9th Cir. 1958). Accordingly, respondent had the option of proceeding against each of them jointly or severally. Garfinkel v. Commissioner, 67 T.C. 1028 (1977); Dolan v. Commissioner, 44 T.C. 420 (1965). When separate petitions are filed, each case is regarded as a separate case, and the parties in each separate case are subject to only their opponent's claim and defenses. Settlement between a docketed taxpayer and respondent is common, notwithstanding the possibility that a related taxpayer may be waiting in the wings to try his case which involves the

same transactions. Even if several parties were to have their cases consolidated for trial, briefing and opinion, there is nothing to prevent respondent from settling with one or more of the consolidated parties, perhaps to the detriment of the remaining parties.

More importantly, this Court is a court of limited jurisdiction. We can only redetermine a deficiency or overpayment with respect to the taxpayer before us; we have no jurisdiction to make any finding as to a third party. IN the instant case, notwithstanding the fact that Martha Ravetti was a party in another docket, she is a third party in this docket and we could not fashion any finding or determination as to her.

If respondent violated some constitutional right of petitioner in settling the case with his ex-wife, that action would not affect our jurisdiction to redetermine the deficiencies and additions to tax due from petitioner for 1979 and 1980. We could not, for example, determine the liability to be less than the correct tax due on the correct taxable income by reason of those actions. To do so would be exercising equity jurisdiction, which we do not have. If respondent violated some constitutional or civil right of petitioner, (and we make no comment whatsoever on this matter) petitioner's remedy might be to seek some sort of redress in Federal District Court.

It is clear to us that petitioner's concern here is its right of contribution from the joint filer. The Internal Revenue Service Code has no provision dealing with such an issue. Contribution

is a matter to be resolved under the state laws. For example, California Civil Code, section 1432 (West. 1982), provides: "A party to a joint, or joint and several obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him." This rule applies even though there has been no contract between the payor and the person benefited. Murchinson v. Murchinson, 219 Cal.App.2d 600, 33 Cal. Rptr. 285, 287 (1963). Consequently, when a party pays the full amount of a tax obligation, a new cause of action for contribution may arise by operation of state law in favor of that party against those sharing the joint and several tax liability. See Murchinson, supra, at 288.[2] Petitioner therefore would have to proceed in the California court system to determine what contribution rights it now has. Again, this Court does not have such jurisdiction.

Accordingly, petitioner's motion to amend and supplement its petition will be denied.

An appropriate order will be issued.

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2 However, paragraph 3 of the Stipulation and Order Amending Interlocutory Judgment of the Dissolution of Marriage, filed in the Ravetti's divorce proceeding provides that the parties thereto shall be equally liable for the tax liabilities unless Martha Ravetti "be judicially determined to be an 'innocent spouse' in relationship to any said tax assessment..."

APPENDIX C
DISTRICT COURT

BEST AVAILABLE COPY

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ESTATE OF SILVIO RAVETTI, Plaintiff, V. UNITED STATES OF AMERICA, Defendant.	)	No. C-90-2-DLJ
	)	ORDER

On June 5, 1991, this Court heard the parties' crossmotions for summary judgment. Richard H. Foster appeared for the plaintiff. Assistant United States Attorney Jay R. Weill appeared for the United States. At that time, the Court directed the government to provide supplemental briefing, and the motions are now appropriately before the Court for consideration. Having considered the papers submitted, the arguments of counsel, the applicable law, and the entire record herein, the Court GRANTS defendant's motion and DENIES plaintiff's motion for the following reasons.

I. BACKGROUND

This is an action brought by the estate of Silvio Ravetti ("Ravetti") seeking a tax refund, and declaratory and equitable relief. Ravetti challenges the stipulation and ruling of the Internal Revenue Service and the United States Tax Court that Ravetti's former wife, Martha

Ravetti, was an "innocent spouse" within the meaning of 26 U.S.C. Section 6013(e), and therefore she may not be held liable for any tax deficiencies arising from disallowed deductions reported on the Ravetti's joint tax returns.

Silvio Ravetti and Martha Ravetti were husband and wife from July 8, 1950, to March 8, 1987, and filed joint federal income tax returns for taxable years 1976 through 1980. On August 13, 1982, a Notice of Deficiency was mailed to the Ravettis for the 1976, 1977, and 1978 tax years, claiming that they owed $115,664.00 in additional taxes. On November 9, 1982, Ravetti filed a petition with the Tax Court disputing the deficiencies for these three years in Docket No. 26617-82. Martha Ravetti filed a separate petition for those years in Docket No. 27142-82.

On November 6, 1986, a second Notice of Deficiency was mailed to the Ravettis for the 1978 and 1980 tax years, claiming that they owed $292,994.24 in additional taxes. Both Ravettis again fled separate petitions in the Tax Court for those years, Ravetti in Docket No. 2913-87, and Martha Ravetti in Docket No. 2750-87.

On March 16, 1988, the government and Martha Ravetti stipulated that she was an "innocent spouse" within the meaning of section 6013(e) and therefore showed no taxes for the years for which assessments were proposed. The Tax Court formally approved the stipulation of the parties in both petitions filed by Martha Ravetti on May 31, 1988.

Following entry of this decision, Ravetti's estate filed a motion in its own Tax Court petition, requesting that

that court vacate the decision entered in Martha Ravetti's case on the ground that she was not entitled to "innocent spouse" status. In denying the relief requested by the estate, the Tax Court noted that each petition before the Tax Court is deemed a separate proceeding, and that the parties to such proceedings are subject only to their opponent's claims and defenses. Moreover, although by filing a joint return spouses become jointly and severally liable for the total amount of any deficiencies assessed, the Tax Court noted that the IRS has the option of proceeding against the respective spouse either jointly or severally. The Tax Court concluded that it had no jurisdiction to consider or grant the requested equitable relief, and characterized the estate's claim as one for contribution from Martha Ravetti. In conclusion, the court recommended that the estate should pursue its request in either federal or state court in California. See Estate of Silvio Ravetti v. Commissioner of Internal Revenue, No. 2913087 Memorandum Opinion at 4-6 (T.C. Jan. 30, 1989).

On November 27, 1990, plaintiff filed the present action, alleging the the improper conferral of "innocent spouse" status on Martha Ravetti resulted in a deprivation of due process to plaintiff, and that the IRS had incorrectly applied 26 U.S.C. Section 138 in assessing a deficiency against plaintiff for years 1978 and onward. The Complaint seeks a tax refund of $40,000.00 paid toward the deficiency assessed for tax year 1978, a declaration that Martha Ravetti is not an "innocent

spouse," and injunctive and other equitable relief.

Both parties presently move for summary judgment. Defendant moves for summary judgment on the grounds that this Court lacks jurisdiction to grant the relief requested. Plaintiff moves for summary judgment on the ground that Martha Ravetti was not entitled to "innocent spouse" status as a matter of law.

II. LEGAL STANDARD FOR SUMMARY JUDGMENT

Under Rule 56(c) of the Federal Rules of Civil Procedure, a district court may grant summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

Recognizing that summary judgment motions can contribute significantly t the resolution of litigation when there are no factual issues, the Supreme Court and the Ninth Circuit have established the following standards for consideration of such motions: "If the party moving for summary judgment meets its initial burden of identifying for the court those portions of the materials on file that it believes demonstrates the absence of any genuine issues of material fact," the burden of production then shifts so that "the non-moving party must set forth, by affidavit or as otherwise provided in Rule 56, '<u>specific facts</u>

showing that there is a genuine issue for trial.'" T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 E2d 626, 630 (9th Cir. 1987) (quoting Fed. R. Civ. P. 56(e) (emphasis added) and citing Kaiser Cement Corp. v. Fischbach & More, Inc., 793 E.2d 1100, 1103-04 (9th Cir.), cert. denied, 107 S. Ct. 435 (1986) and Celotex Corp. v. Catrett, 106 S. Ct. 2548, 2553 (1986). With respect to these specific facts offered by the non-moving party, the court does not make credibility determinations or weigh conflicting evidence, and is required to draw all inferences in a light most favorable to the non-moving party. T.W. Elec. Serv., 809 F.2d at 630-31 (citing Matsushita Elec. Indus. Co. v. Zeneth Radio Corp., 106 S. Ct. 1348,1356 (1986).

Rule 56(c) nevertheless requires this Court to enter summary judgment, "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 106 S. Ct. at 2552. The mere existence on which the jury could reasonably find for the [non-moving party]." Anderson v. Liberty Lobby Inc., 106 S. Ct. 2505, 2512 (1986). This Court thus applies to either a defendant's or plaintiff's motion for summary judgment the same standard as for a motion for directed verdict: "[W]hether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Id.

III. DISCUSSION

Defendant moves for summary judgment on the grounds that this Court lack jurisdiction to grant relief on plaintiff's claim for a tax refund and plaintiff's claims arising from defendant's conferral of "innocent spouse" status on Martha Ravetti.

A. Claim for tax refund.

The United States is immune from suit unless it has expressly waived its immunity and consented to be sued. Cominotto v. United States, 802 E.2d 1127, 1129 (9th Cir. 1986); Gilbert v. DaGrossa, 756 E.2d 1455, 1458 (9th Cir. 1985). Under 28 U.S.C. section 1346(a), this Court has jurisdiction over actions seeking tax refunds; however, plaintiff is barred from proceeding in such an action in this Court until his present petitions pending before the Tax Court reach a final decision as to the amount by which monies collected exceed the amount of deficiency calculated. See 26 U.S.C. Section 6512(a). Moreover, the IRS is prevented from collecting on an assessed deficiency while a petition for redetermination of the deficiency is pending before the Tax Court. Id. Section 6213(a).

In the present case, plaintiff has filed a petition for redetermination of deficiencies for each of the five years from 1976-1980. A payment of $40,000.00 was allegedly made towards satisfaction of the deficiency assessed for 1976, but thee is no record that the relevant petition before the Tax Court has reached

a final resolution. Therefore this Court finds that it is without jurisdiction to consider plaintiff's request for a refund of such payment, and therefore such claims will be dismissed without prejudice.

B. Claims arising from defendant's conferral of "innocent spouse" status on Martha Ravetti in her petition action.

The government contends that this Court is without jurisdiction to grant declaratory relief establishing that Martha Ravetti is not entitled to "innocent Spouse" status under 26 U.S.C. Section 6013(e).

1. Jurisdictional bar of 26 U.S.C. Section 6512

The government first argues that, for the same reasons set forth in the previous section, under 26 U.S.C. Section 6512 this Court may not consider an action for a tax refund while relevant petitions are still pending before the Tax Court. However, a request for a judicial declaration which challenges an IRS "finding" in a separate proceeding before the Tax Court would not seem to fall within the meaning of a suit seeking a tax refund, particularly where, as here, the petitions in which the IRS stipulated to "innocent spouse" status have themselves reached a final judgment. Therefore the Court finds that the present claim for a judicial declaration is not barred by 26 U.S.C. Section 6512.

2. Jurisdiction under the

Declaratory Judgment Act.

The government next challenges plaintiff's claim that this court has jurisdiction under the Declaratory Judgment Act, 28 U.S.C. Section 2201. The Declaratory Judgment Act provides that this Court may determine the rights of interested parties "[i]n a case of actual controversy within its jurisdiction, except with respect to Federal taxes." Id. Thus district courts are generally determined to be without jurisdiction to maintain an action for declaratory judgment involving federal taxes. Warren v. United States, 874 F.2d 280 (5th Cir. 1989); Handeland v. Commissioner of Internal Revenue, 519 F.2d 237 (9th Cir. 1975).

Two exceptions to the general rule barring declaratory relief in tax cases have been recognized: (1) where the government could under no circumstances ultimately prevail and the prerequisites for equity jurisdiction are met, Bob Jones Univ. v. Simon, 416 U.S. 725, 742-46 (1974); Enochs v. Williams Packing and Navigation Co., 370 U.S. 1, 7 (1962); and (2) where the aggrieved party has no access whatsoever to judicial review. United States v. American Friends Serv. Comm., 419 U.S. 7, 11 (1974) ; Bob Jones Univ., 416 U.S. at 746; see also Voss v. United States, 573 F. Supp. 957 (D.C. Colo. 1983) (holding under this standard, that the court was without jurisdiction to consider plaintiff's request that the court declare unconstitutional the Tax Equity and Fiscal Responsibility Act of 1982). The court considers each in turn.

a. Government could under no circumstances ultimately prevail.

Plaintiff argues that under no circumstances could the government ultimately prevail because, as a matter of law, Martha Ravetti is not entitled to "innocent spouse" status. When filing a joint tax return, spouses are jointly and severally liable for the full amount of any tax due on their combined incomes. See 26 U.S.C. Section 6013(d)(3); Stevens v. Commissioner, 872 E.2d 1499, 1503 (11th Cir. 1989). However, where the tax deficiency results from the misreporting by one spouse, done without the other spouse's knowledge, then the latter may under certain circumstances be deemed an "innocent spouse" and not held liable for the deficiencies. See 26 U.S.C. Section 6013(e). Under the original statute, such status was conferred only where the culpable spouse failed to report all income. Thus, where the deficiency resulted from one spouse's reporting deductions which were not allowed under federal tax laws, the other spouse was still jointly and severally liable for such deficiency, regardless of how great the deficiency or egregious the circumstances. However, in 1984 Congress extended the scope of the "innocent spouse" protection to extend to situations where the deficiency was caused by disallowed deductions taken by the culpable spouse. See Deficit Reduction Act of 1984, Pub. L. No. 98-369, Section 424(c)(1), 98 Stat. 494 [hereinafter Amendment].

In the present case, plaintiff

claims that the deficiencies assessed against the joint returns were based on just such disallowed deductions claimed by Ravetti rather than as a result of unreported income. Therefore, because the years for which the deficiencies were assessed all preceded the 1984 amendment, plaintiff contends that the IRS erred in agreeing to convey "innocent spouse" status on Martha Ravetti.

However, with regard to the effective date of the 1984 amendments to section 6013(e), Congress provided that "the amendments . . . shall apply to all taxable years to which the Internal Revenue Code of 1954 applies". See Amendment Section 424(c)(1).[3] Thus the

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Congress also provided a "transitional rule" for joint returns filed prior to January 1, 1985, for joint returns filed prior to January 1, 1985, regarding tax deficiencies attributable to disallowed deductions related to the activities of one spouse. Under the rule, an otherwise innocent spouse would seemingly be entitled to a credit or refund of any tax liabilities assessed or paid only under the following conditions:

(C) the amount of such disallowed deductions exceeds the taxable income shown on the return,

(D) without regard to any determination before October 21, 1988, the other spouse establishes that in signing the return he or she did not know, and had no reason to know, that

there was such an understatement, and

(E) the marriage between such spouses terminated and immediately after such termination the net worth of the other spouse was less than $10,000,

notwithstanding any law or rule of law (including re judicata), the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such understatement, and, to the extent the liability so attributable has been collected from such other spouse, it shall be refunded or credited to such other spouse. No credit or refund shall be made under the preceding sentence unless claim therefore has been submitted to the Secretary of the Treasury or his delegate . . .

Id. Section 424(c)(3). However, this provision seems rather to provide a means whereby an individual who would qualify as an innocent spouse under the newly added basis of disallowed deductions could challenge or undo an assessment of tax liability and any payments made according thereto. Because in the present case Martha Ravetti was deemed an innocent spouse, then it would seem only subsection (1) would apply, and she would not need to meet the conditions set forth in subsection (3) in order to maintain that status.

In short, the amendments look as though they were meant to apply

amendment has been deemed to apply to all years under the 1954 Code for which actions are still open or pending. Price v. Commissioner of Internal Revenue, 887 F.2d 959, 962 n.4 (9th Cir. 1989). Since the returns filed for tax years 1976 - 1980 apparently fell under the 1954 Code provisions and the entry of "innocent spouse" status with respect to each of the joint returns filed did not occur until 1988, then an initial examination supports the conclusion that "innocent spouse" status was not incorrectly conferred on the basis of improper retroactive application of the Amendment to section 6013(e).

Plaintiff's showing that the government will not ultimately prevail is undetermined at best, and clearly does not present the situation where under no circumstances could the government prevail. The Court finds that the present case does not fall within the first exception articulated above, and therefore turns to consider the second.

b. Aggrieved party has no

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retroactively to any joint filings governed by the Internal Revenue Code of 1954 -- as presumably the ones filed on behalf of the Ravettis were -- and that in the event there had been a prior determination and/or payments made in satisfaction of a tax liability, a spouse who would otherwise be deemed innocent on the basis of disallowed deductions could petition for a credit or refund of such calculation or payment by meeting certain conditions.

access whatsoever to judicial review.

Plaintiff argues that, absent this Court, there is no other forum in which plaintiff may seek judicial review of defendant's conferral of "innocent spouse" status on Martha Ravetti. Defendant argues that plaintiff may proceed with this action in state court.

It appears clear that plaintiff has no access to judicial review in the Tax Court. Plaintiff and Martha Ravetti filed separate petitions in the Tax Court. The decision to confer "innocent spouse" status was formally approved by the Tax Court in the case arising from Martha Ravetti's petitions. Plaintiff could not directly challenge such approval in that case because plaintiff was not a party to Martha Ravetti's Tax Court action.

The Tax Court also refused to review the decision in the case arising from plaintiff's own petitions. The Tax Court held that each case is a separate case and the parties in each separate case are subject to only their opponent's claims and defenses. This holding by the Tax Court is not yet reviewable because, as noted previously, the record shows that plaintiff's own case has not reached final resolution in the Tax Court. It may be that plaintiff will be able to obtain review of the "innocent spouse" decision as part of a review of his own petitions pursuant to 28 U.S.C. Section 1346(a). The Court's decision in this case in no way precludes such review.

Recognizing its inability to review the "innocent spouse" decision, the Tax Court advised plaintiff to proceed in California state court for contribution from Martha Ravetti. Plaintiff argues that state court is not an available forum because the state court would be called upon to examine federal tax law. This Court recognizes the inherent problems raised by a state suit for contribution where the party from whom contribution is sought has been conferred "innocent spouse" status within the meaning of federal tax law. Nevertheless, there is no showing before this Court which establishes that a suit for contribution is not available under California law in circumstances such as these. Accordingly, this Court cannot find that there is no access whatsoever to judicial review.

Even if the decision to confer "innocent spouse" status is non-reviewable, this Court is not convinced that equity requites departure from the general rule that this Court is without jurisdiction to maintain an action for declaratory judgment involving federal taxes. Although plaintiff and Martha Ravetti were jointly liable, the IRS seemingly had the option of proceeding against plaintiff separately for the entire tax deficiency. See Garfinkel v. Commissioner, 67 T.C. 1028, 1030 (1977). Thus the practical result of conferring "innocent spouse" status could have been achieved had the Internal Revenue Service merely chosen not to seek collection from Martha Ravetti.

The foregoing conclusions also

comport with the goals of the Declaratory Judgment Act. The avowed purpose of the tax exception is to prevent disruption of the revenue collecting activities of the IRS. See Bob Jones Univ., 416 U.S. at 736 - 37; Williams Packing, 370 U.S. at 7. On initial view, it is uncertain how the present action for declaratory relief would interfere with that process. The action does not seek a recalculation of deficiencies assessed, and feasibly a denial of innocent spouse status would ease the IRS' collection duties by providing a second source of payment for the deficiencies. However, the Court must acknowledge that exposing the IRS to added litigation by former spouses challenging determinations of "innocent spouse" rulings could impede the collection process and provide a means whereby a taxpayer properly determined to be liable for a certain amount in back taxes could avoid collection of those sums by hiding behind the judicial robes of the district court. While the Court recognizes plaintiff's difficulty in trying to challenge what it feels is an erroneous ruling having serious and direct repercussions on plaintiff, this Court is without jurisdiction to permit that challenge to go forward.

3. Jurisdiction under Administrative Procedures Act.

The government finally challenges plaintiff's claim that this Court has jurisdiction under the Administrative Procedure Act (APA), 5 U.S.C. Section 702. The Act provides generally for judicial review of agency decisions where

damages are not sought. However, judicial review is available only where no other statute precludes such review, 5 U.S.C. Section 701(a)(1). The preceding section concluded by finding that the Declaratory Relief Act precludes judicial review, the APA does not provide an independent basis for jurisdiction over this action by this Court.

Because this Court lacks jurisdiction to review plaintiff's claims arising from defendant's conferral of "innocent spouse" status on Martha Ravetti, defendant's motion for summary judgment is granted and plaintiff's claims will be dismissed without prejudice. For the same reasons, plaintiff's motion for summary judgment is denied.

IV. CONCLUSION

For the foregoing reasons, the Court ORDERS as follows:

1. Defendant's motion for summary judgment is GRANTED; plaintiff's claims are DISMISSED WITHOUT PREJUDICE for lack of jurisdiction.

2. Plaintiff's motion for summary judgment is DENIED.

IT IS SO ORDERED